

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES PHILIP DOUGLAS,

Petitioner,

V.

JUDGES BRYAN CHUSCOFF AND LISA
WORSWICK AND PIERCE COUNTY
EXECUTIVE PAT McCARTHY,

Respondents.

CASE NO. C09-5490BHS/JRC

REPORT AND RECOMMENDATION

Noted for October 9, 2009

The underlying Petition for a Writ of Mandamus has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Magistrate Judge's Rule MJR3 and MJR4. Petitioner has been granted *in forma pauperis* status. Petitioner is seeking his release from custody pending retrial on criminal charges in Pierce County. Petitioner has filed a habeas corpus petition addressing the same

1 issues and requesting relief in habeas. That petition is before Judge Bryan and has been referred
2 to Judge Strombom. See Douglas v. Masko, 09-cv-5439RJB/KLS.

3 The mandamus act does not give the court the authority to direct state officials, only
4 federal actors. Therefore, the court lacks authority to consider this writ and the petition should
5 be DISMISSED PRIOR TO SERVICE.

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7 **FACTS**

8 Petitioner alleges that in October of 2004, he was jailed on two separate Pierce County
9 criminal cause numbers (Dkt # 1 proposed petition page 2). He states that the cause numbers
10 were combined for trial and plaintiff was found guilty of all charges. Petitioner alleges that in
11 September of 2008, one of the convictions was overturned by the Washington Court of Appeals.
12 He alleges that the action was returned to Superior Court for retrial. Petitioner alleges that in
13 December of 2008, Pierce County Superior Court Judge Culpepper set aside the Judgment and
14 Sentence on the remaining charges (Dkt. # 1, proposed petition page 3).

15 Petitioner alleges that on the day his retrial was supposed to begin he was attacked in the
16 Pierce County Jail (Dkt. # 1, proposed petition page 5 and exhibit "J"). Petitioner would not
17 identify the person who allegedly attacked him.

18 Petitioner requests that a neutral arbitrator be appointed and that he be released from
19 incarceration pending appeal. He also requests that the court order the expenditure of state funds
20 "so the plaintiff can receive his right to appeal as guaranteed by the Constitution." (Dkt # 1,
21 proposed petition page 6).

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23 **DISCUSSION**

24 A District Court has no jurisdiction to issue a mandamus to compel action by a state
25 official. See 28 U.S.C. § 1361 (district court has jurisdiction over mandamus action only to

1 compel officers of the United States to perform their duties). 28 U.S.C. § 1361 provides: "The
2 district courts shall have original jurisdiction of any action in the nature of mandamus to compel
3 an officer or employee of the United States or any agency thereof to perform a duty owed to the
4 plaintiff." A writ of mandamus is an extraordinary writ, and is issued only when (1) the
5 plaintiff's claim is "clear and certain"; (2) the defendant official's duty to act is ministerial and
6 "so plainly prescribed as to be free from doubt"; and (3) no other adequate remedy is available.
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8 Barron v. Reich, 13 F.3d 1370, 1374 (9th Cir.1994) (citations omitted).

9 This court lacks jurisdiction to entertain this petition. Further, petition is proceeding in
10 habeas corpus under another cause number. This petition should be **DISMISSED**.

11 **CONCLUSION**

12 Based on the foregoing discussion, the Court should deny the petition for writ of
13 mandamus. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
14 procedure, the parties shall have ten (10) days from service of this Report to file written
15 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
16 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the
17 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
18 October 9, 2009, as noted in the caption.

19 DATED this 16th day of September, 2009.

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24 J. Richard Creatura
25 United States Magistrate Judge
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